IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY NINETH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

WRIT PETITION NO : 17337 of 1993

Between:

M/s. Kotak and Company, rep.by it's Partner Suresh Amritlal Kotak,
S/o. Amritlal B.Kotak, R/o. Bombay.

..... PETITIONER

AND

1 Additional Dist. Judge, Tirupathi.
2 Commissioner of payments Under the Sick Textiles under Taking

(Nationalsation) Act,
Ministrry of Commerce(Department of Textiles) New Delhi.
3 M/s. Tirupati Cotton Mills, Renigunta Road.,
Tirupathi, Chittoor dist.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of certiorari or any other appropriate Writ or direction calling for the records relating to the order of the 1st respondent passed in A.S.No.88/86 dt.23.3.1993 confirming the orders of the 2nd respondent passed in claim case No.83/Tirupati/77 dt.30.9.1981 and quash the same and consequently allow the claim of the petitioner company for a sum of Rs.2,81,684 and interest on Rs.1,88,963-15 from 1st day of may 1977 till the date of payment and pass.

Counsel for the Petitioner:MR.O.MANOHER REDDY

Counsel for the Respondent No.2: MR.A.RAJASHEKAR REDDY

(SC FOR CG)

The Court made the following :

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ORDER:

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1. This Writ Petition is filed challenging the order passed by the 1st respondent-Additional District Judge, Tirupathi in A.S.No. 88 of 1986 dated 23-3-1993 confirming the order of the 2nd respondent passed in Claim Case No. 83/Tirupati/77, dated 30.9.1981 and for consequential direction.

2. The petitioner was a private company. The 3rd respondent M/s Tirupati Cotton Mills, Tirupathi was under private management prior to 31-10-1972. However, the Central Government has taken over management of the 3rd respondent company on 31-10-1972 under the Provisions of Sick Textiles Undertakings (Nationalisation) Act, 1974 (Taking over the Management Act,1973). The petitioner has been supplying the cotton yarn to 3rd respondent. However, it supplied yarn for the period from 22-3-1971 to 12-1-1974 amounting to Rs. 2,81,684-50. The said amount was not paid by the management of 3rd respondent when it was under private management or when the management was taken over by the Central Government. In the meanwhile, Sick Textiles Undertakings (Nationalisation) Act, 1974 (for short 'The Act') was enacted by the Central Government which came into force on 1st April, 1974. Under the said Act, the Central Government issued notification declaring the 3rd respondent as Sick Textile Undertaking and 3rd respondent figures at Sl.No. 101 of the I Schedule to the Act. It is also not in dispute that the assets and liabilities of the 3rd respondent management were taken over by the Central Government, by virtue of provisions contained in the Act with effect from 23-9-1974 and the issues relating to the liability during post taken over and pre-taken over period was stipulated in Sections 21,22,23 and 27 of the Act. Under the II Schedule the order of priority for discharging of liability in respect of Sick Textile Undertaking was stipulated. Part 'A' relates to post taken over management period and part 'B' relates to pre-taken over management period. The petitioner laid a claim before the 2nd respondent claiming the dues payable to it by the 3rd respondent treating it as a liability of post taken over management period falling under the category II Sub-Clause (b) of the Act. But,

however, the 2nd respondent holding that the taken over of the management was reckoned from 23-7-1974 whereas the alleged supply is prior to 23-7-1974, rejected the claim of the petitioner.

3. Against the said order initially, appeal was filed before the Sub-Court. But, thereafter on the question of jurisdiction the same was presented before the District Court and the learned District Judge, in Appeal i.e. A.S.No.88 of 1986, dated 23-3-1993 dismissed the appeal filed by the petitioner holding that the order of the 2nd respondent was legal and also that the appeal is barred by limitation. Assailing the said order, this present Writ Petition has been filed.

4. The learned counsel for the petitioner submits that the dismissal of the appeal on the ground of limitation is wholly misconceived. He submits that when the appeal was filed before the Sub-Court the same was returned for submission before the District Court on the question of jurisdiction and when the appeal was presented before the District Court, an application was filed to condone the delay. The learned District Judge, condoned the delay, numbered the appeal and adjudicated the matter on merits. In such a situation, question of dismissal of the appeal by the learned District Judge on the limitation aspect, does not arise.

5. Heard the learned Standing Counsel for Central Government. Perused the order of District Court. The delay was condoned in application i.e. I.A.No. 106 of 1986 by order dated 17th September, 1986. Therefore, the question of dismissing the appeal on limitation aspect does not arise.

6. The second question that falls for consideration is whether the order passed by the Appellate Court confirming the order of the primary Authority is justified.

7. The Central Government enacted the Sick Textile Undertaking (Taking Over the Management) Act, 1972 (Act 72 of 1972) providing for taking over in the public interest, the management of Sick Textile Undertakings pending nationalization. The Act came into effect from 31-10-1972. Under Section 4, the management of Textile units specified in the first schedule shall vest in the Central Government from the appointed day namely 31.10.1972. The petitioner unit falls in the 1st Schedule figuring at S.No.44. Under Section 4(3), the liabilities and obligations of the Sick Textile Undertaking subsisting immediately before the appointed date and also all the agreements entered into between the textile company in relation to the textile

undertaking and in force immediately before that date shall form part of Sick Textile Undertaking. While, it was under the management of the Central Government, the Central Government enacted the Sick Textile Undertaking Nationalisation Act, 1974 (Act 57 of 1974) providing for the acquisition and transfer of the Sick Textile Undertaking in the 1st Schedule. In the 1st Schedule, the 3rd respondent-company was shown at S.No.101. Under Section 20 of the Act, a claim has to be made before the Commissioner within 30 days from the specified date. Accordingly, the petitioner-Company, who supplies foreign cotton to the 3rd respondent-Company between 22-3-1971 to 12-1-1974 lodged a claim before the Commissioner for a sum of Rs.2,81,681-50 with interest from 1-5-1977 till the date of payment. The learned Commissioner disposed of the claim holding that the management of the 3rd respondent unit was actually taken over by the Central Government on 23-7-1974. In that view of the matter, the Commissioner held that the debt should be treated as post taken over debt, which falls under schedule of category 6. Holding so, the Commissioner negatived the contention of the company. Aggrieved by the said Order, the petitioner company filed an appeal before the appellate authority. But, however, the appeal was also dismissed by the 1st respondent-Addl. District Judge, Tirupathi by an Order dated 23-3-1993. Against the said Order, the present Writ Petition has been filed.

8. As already stated supra, with regard to the question of limitation, the 1st respondent was not justified in rejecting the appeal on the ground of limitations.

9. Let us consider the merits of the case.

10. Under Section 3, on the appointed day, every Sick Textile Undertaking and the right, title and interest of the owner in relation to every such Sick Textile Undertaking shall stand transferred to and shall vest absolutely in the Central Government and every Sick Textile Undertaking which stands vested in the Central Government by virtue of sub-section 1 of Section 3 shall immediately after it has so vested, stand transferred to, and vested in, the National Textile Corporation. The effect of vesting is contained in Section 4, which reads thus:

“Section 4. General effect of vesting:- (1) The sick textile undertaking referred to in

Section 3 shall be deemed to include all asserts, rights, lease-holds, powers authorities and privileges and all property, movable and immovable, including lands, buildings workshops, stores, instruments, machinery and equipment, cash balances, cash on hand, reserve funds, investments and book debts and all other rights and interests in, or arising out of, such property as were immediately before the appointed day in the ownership, possession, power or control of the owner of the sick textile undertaking, whether within or outside India, and all books of account, registers and all other documents of whatever nature relating thereto and shall also be deemed to include the liabilities and obligations specified in sub-section (2) of Section 5.

(2) to (7) xx xxx xxxxx

Therefore, by virtue of Section, all the assets and liabilities of the Sick Textile unit shall be deemed to vest in the Central Government. Claims to be made before the Commissioner is stipulated in Section 20 and the priority of the claims is contained in Section 21, which reads thus:

“SECTION 21 Priority of claims-The claims arising out of the matters specified in the Second Schedule shall have priorities in accordance with the following principles namely:-

a. Category I will have precedence over all other categories and Category II will have precedence over Category III and so on;

b. the claims specified in each of the categories except Category IV shall rank equally and be paid in full, but if the amount is insufficient to meet such claims in full, they shall abate in equal proportions and be paid accordingly;

c. the liabilities specified in Category IV shall be discharged, subject to the priorities specified in this section, in accordance with the terms of the secured loans and the priority inter se of such loans, and

d. the question of payment of a liability with regard to a matter specified in a lower category shall arise only if a surplus is left after meeting all the liabilities specified in the immediately higher category”.

Therefore, it has to be considered whether the claim made by the Writ Petitioner falls in the priority claim if so in which category. It is also not in dispute that the 3rd respondent Undertaking was declared as Sick Textile Undertaking specified in First Schedule of the Nationalisation Act and it figures at S.No. 101 in the Schedule. Under Part-A and B of Second Schedule, the Order of priorities for discharge of liabilities in respect of the Sick Textile Undertaking have been specified in the Second Schedule, which is reproduced below:

"**THE SECOND SCHEDULE**

(See Sections 21,22,23 and 27)

Order of priorities for the discharge of liabilities in respect of a sick textile undertaking.

PART A

Post –Take over management period

Category I.

a. Loans advanced by a bank.

b. Loans advanced by an institution other than a bank.

c. Any other loan.

d. Any credit availed of for purpose of trade or manufacturing operations.

Category-II.

a. Revenue, taxes, cesses, rates or any other dues to the Central Government or a State Government.

b. Any other dues.

PART-B

Pre-take over management period

Category III.

Arrears in relation to provident fund, salaries and wages, and other amounts,

due to an employee.

Category IV.-

Secured loans.

Category V.-

Revenue, taxes, cesses, rates or any other dues to the Central Government, as State Government, a local authority or a State Electricity Board.

Category VI.-

a. Any credit availed of for purpose of trade or manufacturing operations.

b. Any other dues".

The claim Commissioner and also the learned appellate authority held that the actual management of the company was taken over on 27-9-1974 and from that date onwards the liabilities and assets stood vested by virtue of Section 3 and 4 of the Nationalisation Act and since transactions were much earlier to 23-9-1974, the question of accepting the liability does not arise. But, it has to be seen that the management of the 3rd respondent company already vested with the Central Government from 31-10-1972 under the Sick Textile Undertaking (Taking Over the Management) Act, 1972, but the ownership of the Company was taken over from 23-9-1974. Therefore, for the purpose of applicability of Schedule Two, whether taking over the ownership of the Company or taking over the management of the Company is to be decided.

The phraseology used by the Parliament is very clear on this aspect. It has clearly mentioned in the Act with reference to the Pre-takeover management period and post take over management period and it did not refer to taking over ownership of the 3rd respondent Company. The words are used in the Schedule are very specific. If that has to be construed in a proper perspective, the management was taken over by the Central Government on 31-10-1972. Therefore, it has to be correlated to the said date and it has no relation with the date 23-7-1974 when the

ownership stood vested. If the vesting of ownership is intended, it should have mentioned the pre-take over ownership is intended, it should have mentioned the pre-take over ownership period and post take over period. That phraseology was not adopted.

Therefore, under those circumstances, I am of the considered view that the learned District Judge and the original authority failed to consider these crucial aspects. Accordingly, I hold that the liabilities of the 3rd respondent will date back to pre-take over management period namely 31-10-1972. Therefore, any cotton supplied to the 3rd respondent by the petitioner prior to 31-10-1972, the Central Government will not be liable. But, however, for the period from 31-10-1972 till 12-1-1974, the liability of the Central Government subsists and it falls within the category of Part-A sub-clause (b) of clause (2).

Accordingly, the Writ Petition is disposed of directing the petitioner to file an application before the 2nd respondent claiming the value of the cotton supplied from 31-10-1972 till 12-1-1974 and the same shall be assessed and calculated depending in the genuineness of the claim. The petitioner shall file such claim before the 1st respondent within a period of six weeks from the date of receipt of a copy of this Order. On filing such claim, the 2nd respondent shall causing enquiry and pass appropriate Orders with regard to the liability of the Central Government within a period of six weeks from thereafter treating the liability in Second Schedule Part-A sub-clause (b) of Category-II.

There shall be no Order as to costs.

G.Bikshapathy,J.

29th July, 2004.

KM

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. Additional Dist. Judge, Tirupathi.
2 Commissioner of payments Under the Sick Textiles under Taking

(Nationalsation) Act, Ministrry of Commerce(Department of Textiles) New . Delhi.

3. 2CD copies

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

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